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Dated: October 15, 2010
Electronic Signature for Bruno Polito: /Bruno Polito/

SONYJP 3.3-731
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Inokuchi et al.

Application No.: 09/869,816

Filed: July 3, 2001

For: DATA DECODING APPARATUS AND METHOD, CHARGE INFORMATION PROCESSING APPARATUS AND METHOD, DATA REPRODUCING APPARATUS AND METHOD, ELECTRONIC MONEY, ELECTRONIC USE RIGHT, AND TERMINAL APPARATUS

Group Art Unit: 2439

Examiner: Ronald Baum

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This brief is filed in support of the appeal from the final rejection of claims 1-11, 49-63, 87-92, and 94-96 mailed September 1, 2009. The Commissioner is hereby authorized to charge the $540.00 required by 37 C.F.R. § 41.20(b)(2) for filing of the brief, and any other fees that may be due and owing in connection with the brief, to Deposit Account No. 12-1095.

REAL PARTIES IN INTEREST

The real party in interest in this case is the assignee of record: Sony Corporation, a corporation of Japan, having a place of business at 1-7-1 Konan, Minato-ku, Tokyo, 108-0075, Japan. The assignment of the present application to Sony Corporation was recorded in the United States Patent and Trademark Office on July 30, 2001, at Reel 012081, Frame 0638.

RELATED APPEALS AND INTERFERENCES

At present, there are no other appeals or interferences known to Applicants, Applicants' legal representative, or the assignee, which will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-11, 49-63, 87-92, and 94-96 are pending in the application. Claims 12-48 and 64-86 have been canceled. No claim 93 was ever presented. Claim 93 was inadvertently omitted when claims 89-92 and 94-96 were presented. More specifically, in an Amendment filed April 9, 2007, claims 89-92 and 94-96 were submitted as new claims, with the number "93" being unintentionally omitted, such that no claim was ever assigned number "93."

In an official action mailed September 1, 2009, claims 1-11, 49-63, 87-92, and 94-96 were finally rejected. The final rejection of claims 1-11, 49-63, 87-92, and 94-96 is being appealed.

STATUS OF AMENDMENTS

A final office action rejecting claims 1-11, 49-63, 87-92, and 94-96 was mailed on September 1, 2009. A Request for Reconsideration responding to the final action was filed on November 10, 2009. In an Advisory Action mailed on December 4, 2009, the Examiner indicated that the Request for Reconsideration was considered, and asserted that the Request does not place the application in condition for allowance.

A Pre-Appeal Brief Request for Review was filed on February 1, 2010. In response to the Pre-Appeal Brief Request for Review, a Notice of Panel Decision from Pre-Appeal Brief Review issued on April 16, 2010. The Notice indicated that the application should proceed to the Board of Patent Appeals and Interferences.

SUMMARY OF CLAIMED SUBJECT MATTER

Applicants' invention as recited in claims 1, 11, and 49 is directed toward an apparatus and method for reproducing contents data which includes at least one of audio data and video data. Each of the claims recites that "[a memory stores] at least one of information concerning a number of occurrences in which said contents is reproduced and information concerning an amount of time during which said contents is reproduced," and that "said information concerning a number of occurrences in which said contents is reproduced and/or said information concerning an amount of time during which said contents is reproduced [is] updated upon reproduction of contents." Supporting disclosure for the quoted recitations can be found in the specification at, for example, page 17, line 26 - page 18, line 14. For purposes of this appeal, the

quoted recitations will be collectively referred to as Applicants' "reproduction history" recitations.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether or not claims 1-11, 49-63, 87-92, and 94-96 are unpatentable under 35 U.S.C. §102(b) as being anticipated by Daggar (U.S. Patent No. 5,748,737).

ARGUMENT

Applicants respectfully submit that independent claims 1, 11, and 49 are patentable over Daggar based at least on Applicants' reproduction history recitations. That is, Applicants submit that the independent claims are patentable over Daggar based at least on the following recitations: "[a memory stores] at least one of information concerning a number of occurrences in which said contents is reproduced and information concerning an amount of time during which said contents is reproduced," and "said information concerning a number of occurrences in which said contents is reproduced and/or said information concerning an amount of time during which said contents is reproduced [is] updated upon reproduction of contents." Such features are integral to Applicants' improved scheme for the dissemination and commercial exploitation of copyrighted content. (See e.g., specification page 2, line 8 - page 3, line 24; and page 30, line 13 - page 31, line 4.)

Daggar does not disclose Applicants' reproduction history features. More particularly, Daggar does not disclose the reproduction of audio data or video data, let alone the storage of information concerning a number of occurrences or amount of time in which audio data or video data is reproduced, and let alone updating such information.

In the official action, the Examiner offers only a general assertion that Daggar discloses Applicants' reproduction history features, and provides no meaningful citations to Daggar in support of his assertion. Rather, the Examiner cites to the entirety of Daggar's Abstract, Field of Invention, Background of Invention, Summary of Invention, and Description of the Preferred Embodiment in support of his assertion (see e.g., official action page 7, line 4 - page 8, line 20), which provides Applicants with no guidance for identifying the relevant portions of Daggar.

Nevertheless, Applicants note that the Examiner does provide meaningful citations in connection with his more general assertion that Daggar discloses the reproduction of audio data or video data. In particular, the Examiner cites the following portions of Daggar in an attempt to support his assertion that Daggar discloses the reproduction of audio data or video data: col. 11, lines 22-28; column 13, line 65-col. 14, line 7; col. 8, lines 31-43; col. 7, line 32-col. 8, line 30; and col. 20, lines 11-19 (see e.g., official action page 4, lines 1-6).

However, the portions of Daggar cited by the Examiner in connection with his assertion that Daggar discloses the reproduction of audio data or video data do not disclose the reproduction of audio data or video data.

Regarding col. 11, lines 22-28, this portion discloses that a display may be employed and that voice recognition may be employed. No mention is made of reproducing video data for purposes of display, or of reproducing audio data as part of performing voice recognition.

Regarding col. 13, line 65-col. 14, line 7, this portion discloses that a "photo" could "be included on the generic

multimedia card." No mention is made of reproducing video data.

Regarding col. 8, lines 31-43, this portion discloses that "digital card transactions" can be "performed using any telephone," and that multiple "media interfaces" may be provided. The portion is silent as to the reproduction of audio data or video data.

Regarding col. 7, line 32-col. 8, line 30, Applicants are unable to discern any mention of the reproduction of audio data or video data.

Regarding col. 20, lines 11-19, this portion discloses "payment via any media interface … (e.g. payment displayed and communicated verbally …)." However, there is no mention of the reproduction of audio data or video data in connection with such payment.

In view of the above, Applicants submit that Daggar does not disclose the reproduction of audio data or video data, let alone the storage of information concerning a number of occurrences or amount of time in which audio data or video data is reproduced. Further, Daggar does not disclose updating information concerning a number of occurrences or amount of time in which audio data or video data is reproduced. Therefore, Applicants believe that the independent claims (claims 1, 11, and 49) are patentable over Daggar on at least this basis.

Regarding the comments provided by the Examiner in the Advisory Action, Applicants believe that such comments may be characterized as being based on three primary assertions: (1) that a disclosure of updating a still image is a disclosure of the reproduction of video data; (2) that a disclosure of performing voice recognition is a disclosure of the reproduction of audio data; and (3) that a disclosure of

communicating over an audio information channel is a disclosure of the reproduction of audio data.

In reply, Applicants note: (1) that the processing of image data is distinct from the processing of video data, as evidenced by the different standards that have developed around the two types of data (e.g, JPEG and MPEG), and more generally, that the updating of data is distinct from the reproduction of data; (2) that recognizing a voice does not necessarily involve the reproduction of audio data (e.g., recognition may be based on comparing an incoming voice signal to synthesized audio data rather than reproduced audio data); and (3) that data communicated over an audio channel is not necessarily reproduced audio data (e.g., real time communication over a phone line does not involve reproduction of audio data).

Since Daggar does not disclose Applicants' reproduction history features, Daggar can not realize the advantages of Applicants' invention with respect to the dissemination and commercial exploitation of copyrighted content. Therefore, Applicants believe that claims 1, 11, and 49 are patentable over Daggar based at least on Applicants' reproduction history recitations.

Further, since dependent claims inherit the limitations of their respective base claims, Applicants believe that dependent claims 2-10, 50-63, 87-92, and 94-96 are patentable over Daggar for at least the same reasons discussed in connection with the independent claims.

CONCLUSION

Claims 1-11, 49-63, 87-92, and 94-96 are not anticipated by Daggar. Accordingly, it is respectfully submitted that the Examiner erred in rejecting claims 1-11, 49-63, 87-92, and 94-

96 and a reversal of such rejections by this Honorable Board is solicited.

Dated: October 15, 2010

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APPENDIX A - CLAIMS

1. A data reproducing apparatus comprising:

a memory configured to store contents data, subordinate data, and right data, said contents data including at least one of audio data and video data, said subordinate data including a reproduction conditions label of said contents data, and said right data indicating a right to reproduce said contents data;

a reproducing unit configured to reproduce said contents data; and

a controller configured to control said reproducing unit to reproduce said contents data based on said right data, and to change said right data based on said subordinate data when said contents data are reproduced,

said reproduction conditions label identifying a charge type among the charge types of buying type, gross type and degree type, and respectively specifying the charge conditions,

said memory storing at least one of information concerning a number of occurrences in which said contents is reproduced and information concerning an amount of time during which said contents is reproduced, and

said information concerning a number of occurrences in which said contents is reproduced and/or said information concerning an amount of time during which said contents is reproduced being updated upon reproduction of contents.

2. The data decoding apparatus according to claim 1, wherein said subordinate data includes identifiers of said digital data and said memory stores a log of an identifier of decoded digital data when said digital data is decoded.

3. The data decoding apparatus according to claim 1, further comprising an interface that safely exchanges data with an external apparatus by encrypting the data, wherein said right data is transmitted through the interface.

4. The data decoding apparatus according to claim 3, wherein the interface has a contactless communicating unit.

5. The data decoding apparatus according to claim 4, wherein the interface has an eclectic power receiving unit;

and data stored in said memory can be accessed through said interface by receiving power through said interface.

6. The data decoding apparatus according to claim 1, further comprising an interface that safely exchanges data with an external apparatus by encrypting the data,

wherein log data stored in said memory can be transmitted through said interface.

7. The data decoding apparatus according to claim 6, wherein said interface has a contactless communicating unit.

8. The data decoding apparatus according to claim 7, wherein said interface has an electric power receiving unit and data stored in said memory can be accessed through said interface by receiving power through said interface.

9. The data decoding apparatus according to claim 1, wherein when the digital data are decoded, a decoding

condition is embedded as a watermark into the output data.

10. The data decoding apparatus according to claim 9, wherein when the digital data includes a watermark, the digital data can be decoded when the watermark is the same as the decoding condition.

11. A data reproducing method to reproduce contents data stored in a storage, the method comprising the steps of:

reproducing said contents data, said contents data including at least one of audio data and video data; and

controlling the update of right data corresponding to said contents data based on subordinate data when said contents data is reproduced, said right data indicating a right to reproduce said contents data, and said subordinate data including a reproduction conditions label of said contents data,

said reproduction conditions label identifying a charge type among the charge types of buying type, gross type and degree type, and respectively specifying the charge conditions,

said storage storing at least one of information concerning a number of occurrences in which said contents is reproduced and information concerning an amount of time during which said contents is reproduced, and

said information concerning a number of occurrences in which said contents is reproduced and/or said information concerning an amount of time during which said contents is reproduced being updated upon reproduction of contents.

49. A data reproducing apparatus comprising:

a memory configured to store contents data, subordinate data, and right data, said contents data including

at least one of audio data and video data, said subordinate data including a reproduction conditions label of said contents data, said right data indicating a right to reproduce said contents data;

a reproducing unit configured to reproduce said contents data; and

a controller configured to control said reproducing unit to reproduce said contents data based on said right data and to change said right data based on said subordinate data when contents data reproduced by said reproducing unit is not free,

said reproduction conditions label identifying a charge type among the charge types of buying type, gross type and degree type, and respectively specifying the charge conditions,

said memory storing at least one of information concerning a number of occurrences in which said contents is reproduced and information concerning an amount of time during which said contents is reproduced, and

said information concerning a number of occurrences in which said contents is reproduced and/or said information concerning an amount of time during which said contents is reproduced being updated upon reproduction of contents.

50. The decoding apparatus according to claim 49, wherein when the decoded digital data is free, the controller does not change said right data stored in said second storage.

51. The decoding apparatus according to claim 49, further comprising a converting unit configured to convert output digital data outputted from the decoding unit into an analog signal.

52. The decoding apparatus according to claim 49, wherein decoding history information of the decoded data are stored said second storage.

53. The decoding apparatus according to claim 52, further comprising a communicating unit, wherein the decoding history information and the right data are transmitted to an external apparatus through the communicating unit.

54. The decoding apparatus according to claim 53, wherein an operation power is supplied to the apparatus from an exterior source through the communicating unit.

55. The decoding apparatus according to claim 49, wherein the decoding unit comprises a decoder configured to decode an encryption performed on the digital data and a decompressing unit configured to decompress the data decoded by the decoder.

56. The decoding apparatus according to claim 49, further comprising a watermark detecting unit for detecting whether a watermark has been added to output data outputted from the decoding unit, wherein when the watermark is not detected from the decoded data, the decoded data are outputted.

57. The decoding apparatus according to claim 56, wherein when the data regarding the decoding conditions are included in the watermark detected by the watermark detecting unit, the controller collates the output data with the data regarding the decoding conditions extracted from the decoded subordinate data and outputs the reproducing data from the

decoding unit when the data corresponding to the decoding conditions detected by the watermark detecting unit coincides with the data corresponding to the reproducing conditions extracted from the decoded subordinate data stored in the first storage.

58. The decoding apparatus according to claim 56, wherein when the data regarding the decoding conditions detected by the watermark detecting unit does not coincide with the data regarding the reproducing conditions extracted from the decoded subordinate data stored in the first storage, the controller does not output the decoded digital data from the decoding unit.

59. The decoding apparatus according to claim 58, wherein said decoding unit further includes a decoding conditions detecting unit configured to extract the data regarding the decoding conditions from the decoded digital data.

60. The decoding apparatus according to claim 57, further comprising a watermark adding unit configured to add a watermark formed on the basis of the data regarding the decoding conditions, wherein when the watermark cannot correctly be detected from the decoded digital data outputted from said decoding unit by the watermark detecting unit, the watermark adding unit forms the watermark and adds the watermark to the decoded digital data.

61. The decoding apparatus according to claim 60, wherein when the watermark is correctly detected from the decoded digital data from the decoding unit by said watermark

detecting unit, said watermark adding unit does not add the watermark to the decoded digital data.

62. The decoding apparatus according to claim 49, wherein said decoding unit, said second storage, and said controller are constructed as one chip.

63. The decoding apparatus according to claim 49, wherein when the right data stored said second storage unit indicate that the decoded digital data cannot be reproduced, said controller stops the decoding process.

87. The data reproducing apparatus according to claim 1, wherein said contents data includes at least one of audio data, video data, still image data, character data, computer graphic data, game software, and a computer program.

88. The data reproducing apparatus according to claim 49, wherein said contents data includes at least one of audio data, video data, still image data, character data, computer graphic data, game software, and a computer program.

89. The data reproducing method according to claim 11, further comprising the step of exchanging data with an external apparatus through an interface by encrypting the data, wherein said right data is transmitted through the interface.

90. The data reproducing method according to claim 89, wherein the step of exchanging data comprises the step of exchanging data through an interface that includes a contactless communicating unit.

91. The data reproducing method according to claim 90, wherein the step of exchanging data comprises the step of exchanging data through an interface that includes an electric power receiving unit;

and wherein data can be accessed through said interface by receiving power through said interface.

92. The data reproducing method according to claim 11, further comprising the step of transmitting a reproduction log through an interface.

94. The data reproducing method according to claim 92, wherein the step of exchanging data comprises the step of exchanging data through an interface that includes a contactless communicating unit.

95. The data reproducing method according to claim 94, wherein the step of exchanging data comprises the step of exchanging data through an interface that includes an electric power receiving unit;

and wherein data can be accessed through said interface by receiving power through said interface.

96. The data reproducing method according to claim 11, wherein said step of reproducing comprises the steps of decoding said contents data and embedding a decoding condition as a watermark on the decoded data.

APPENDIX B – EVIDENCE

None.

APPENDIX C – RELATED PROCEEDINGS

None.